

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

5 Appl. No.: 09/756,680  
Confirm No: 4581  
Filed: Jan10.2001  
Title: SYSTEM INTERFACE FOR CELL AND/OR PACKET TRANSFER  
Inventors: Richard Cam, et al.

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15 January 8, 2010  
Vancouver, B.C.  
Canada

Hon. Commissioner of Patents and Trademarks  
POB 1450  
Alexandria, Va. 22313-1450

20 **APPLICANTS' SUMMARY OF PHONE INTERVIEWS AND MESSAGES FROM**  
**NOVEMBER 13, 2009 TO JANUARY 05, 2010**

Dear Sir:

25 On Jun29.09 Examiner Wong filed a final office action (FOA)  
in this case allowing independent Claim 14 and rejecting Claims  
1, 3-8, 10, 12, 13 and 15 under 35 U.S.C. § 112, 2<sup>nd</sup> paragraph.

On Oct06.2009 the applicants filed a petition for extension  
pursuant to 37 CFR § 1.136(a) and a response to the FOA,

30 cancelling all claims and entering new Claims 16 - 29.

Independent Claim 26 captured the allowable subject matter of  
Claim 14.

On Oct30.2009 an advisory action signed by Supervisory Patent  
Examiner Ayaz R. Sheikh was filed in response to the applicants'

amendments of Oct06.2009. The advisory action noted that the applicants' proposed amendments were not being entered. However, the advisory action bore no discernable relationship to either the FOA or the applicants' response to the FOA. For instance the  
5 advisory action held that Claim 2, which had been cancelled long before, was now objected to. Furthermore, the advisory action did not mention the proposed new claims, Claims 16-29, nor did the advisory action withdraw or otherwise mention the allowance of Claim 14. As a result of this erroneous advisory action it  
10 was not possible for one to determine what claims were rejected and what claims were allowed; consequently, applicants could not possibly know whether or not to file a notice of appeal because they could not determine the status of their claims.

15 **Phone messages of Nov13.2009**

The advisory action was received by the applicants' firm and the undersigned, personally, on Nov13.2009. On that same date the undersigned placed a call to Examiner Wong to alert her to the erroneous advisory action and to resolve the problem. The  
20 undersigned left a message for Examiner Wong setting forth the problems with the Advisory Action. On the same date, Nov13.2009,

Examiner Wong returned the undersigned's call after the undersigned had left work for the day. Examiner Wong stated in her message that she could see nothing wrong with the advisory action and that the amendments were not being entered, as stated  
5 in the advisory action.

#### **Phone interview of Nov19.2009**

On Nov19.2009 the undersigned electronically filed a Notice of Errors in order to make a record of the flawed advisory  
10 action. On the same date the undersigned placed a call to Examiner Wong to insure that she saw the written description of the errors so she could understand the problems with the advisory action. Examiner Wong called back. At first Examiner Wong thought the undersigned was complaining because the amended  
15 claims had not been entered, but eventually the undersigned was able to convince Examiner Wong that the advisory action had no relevance to the FOA or to the amended claims. Examiner Wong then agreed that there appeared to be a problem with the advisory action. Examiner Wong stated that she was not yet able to view  
20 the Notice of Errors filed on that same date, but that when the notice was passed to her, she would "take action."

## Phone interview of Jan04.2010

On Jan04.2010 the undersigned placed a call to Examiner Wong to inquire as to the status of the case. Examiner Wong called back and made the following points:

1. Examiner Wong advised that no further action had been taken with respect to the erroneous advisory action.
2. Examiner Wong acknowledged that the advisory action sent on Oct30.2009 was "the wrong one" and that it had been previously entered in response to a paper filed on Mar03.2006. Examiner Wong admitted that the advisory action sent out on Oct30.2009 had no relevance to the FOA or the applicants' response to the FOA.
3. Examiner Wong acknowledged that the advisory action that should have been sent out allowed Claims 26 and 27, but that the remaining proposed new claims were not entered.
4. Examiner Wong pointed out, and the undersigned agreed, that the final deadline for responding to the FOA was Dec29.2009. However, Examiner Wong then concluded that because the deadline had passed without a response, the case was now abandoned. When the undersigned pointed

out that the applicants filed a response to the FOA on Oct06.2009 with the required extension petition and fee, Examiner Wong stated to the effect that "That doesn't matter."

5       The undersigned expressed his opinion that the case was not abandoned because 1) Claim 14 had been allowed by the FOA; 2) the applicants made a timely response to the FOA and cancelled the rejected claims; and 3) the proper advisory action, which was not entered because of Examiner Wong's error, allowed the new claims  
10   26 and 27 but there had not yet been filed the notice of allowance. The undersigned further expressed his opinion that the applicants are at least entitled to a supplementary advisory action and a notice of allowance. Examiner Wong tentatively agreed with this position and agreed to discuss the matter with  
15   PTO employees who understand the procedural rules better than she does. Specifically, Examiner Wong agreed to try and enter a supplementary advisory action in order to correct the erroneous advisory action. Examiner Wong asked the undersigned to call back the next day in order to give her time to discuss the matter  
20   with her "procedural people."

## Phone interview of Jan05.2009

The following day, Jan05.2010, the undersigned placed a call to Examiner Wong at the appointed time, 8:00 AM PST, but Examiner Wong was not then prepared to discuss the case. Examiner Wong  
5 called back an hour later and said she was still checking with her "procedural people." Examiner Wong called back approximately five hours later and said that she had spent "the whole day" trying to resolve the problem. Examiner Wong stated that she was not able to enter the supplemental advisory action because "the  
10 computer won't take it." She said that, according to the "procedural people" she spoke with, the case was abandoned and nothing more could be done. When the undersigned asked about the claims that had been allowed, Examiner Wong stated that they were lost because there had been no response to the FOA. When the  
15 undersigned corrected her by observing that a response to the FOA was filed on Oct06.2009, Examiner Wong said, to the effect, "You should have responded to the advisory action."

The undersigned then said that he needed to speak with Examiner Wong's supervisor to confirm that the application was,  
20 in fact, abandoned and nothing could be done. The undersigned asked Examiner Wong for her supervisor's name and phone number.

Examiner Wong refused to provide either her supervisor's name or phone number, saying there was no reason to speak with her supervisor and that in any event the undersigned could look up her supervisor's name and phone number in the file. This file  
5 extends back to 2001 and there are at least two supervisors indicated in the file. The undersigned expressed his disbelief that Examiner Wong, as a federal PTO employee, was refusing to provide her supervisor's name and phone number. Eventually, Examiner Wong did provide Mr. Sheikh's name and phone number but  
10 in doing so she threatened the undersigned by stating that if the undersigned caused any problems for her over this matter, she would tell every examiner in her art group and "they will know how to deal with you . . . you will never get another patent from this group."

15 The phone interview of Jan05.2010 was terminated at that point without a resolution of any outstanding issue.


**Phone message of Jan05.2010**

20 Following the foregoing conversation with Examiner Wong, the undersigned placed a phone call to Supervisory Patent Examiner Ayaz R. Sheikh and left a message. As of the date of the present

paper that call has not been returned.

Respectfully submitted,

Date: Jan08.2010

  
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Date: Jan08.2010

  
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